HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

Writ Appeal No.686 of 2006

Between:

The Commissioner of Prohibition and Excise,
Government of Andhra Pradesh and another

…Appellants

And

M.Harikiran

…Respondent.

JUDGMENT

Counsel for the Appellants : Government Pleader for
Prohibition and Excise

Dated: 19-6-2006

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Per G.S.Singhvi, CJ

This appeal is directed against order dated 25-4-2006 passed by the learned Single Judge whereby she allowed the writ petition filed by respondent-M.Harikiran and declared that he is liable to pay only Proportionate Licence Fee for 2B licence.

The facts:

The respondent is engaged in the business of liquor. On an application made by him, under Rule 5 (1) of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the 2005 Rules'), Commissioner of Prohibition and Excise (hereinafter described as 'the Commissioner'), vide his order dated 21-10-2005, accorded permission for grant of licence for selling by Bar under the name and style of M/s Bagga Restaurant and Bar for the year 2005-06 i.e. with effect from 1-7-2005 to 30-6-2006 in Macherla town, District Guntur subject to the payment of Licence Fee and furnishing Bank Guarantee etc. Accordingly, Prohibition and Excise Superintendent, Guntur (appellant No.2) issued Licence No. 190/2005-06 in Form-2B in favour of the respondent. The relevant extracts of the licence are reproduced below:

> "I, A. RAMESH KUMAR, Prohibition and Excise Superintendent, NARSARAOPET in consideration of the payment of a fee of Rs.2,75,000-00 (Rs.Two lakhs and Seventy Five thousand only), the receipt of which is hereby acknowledged and hereby licence you SRI MADDI HARI KIRAN, S/O. NAGENDRA RAO, R/O.MACHERLA to sell all kinds of Indian Liquor and Foreign Liquor on the premises M/S.BAGGA RESTAURENT AND BAR, MACHERLA bearing No.12-2-493/2, MACHERLA the details of which are as follows:
>
> BOUNDARIES
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> | | | |
> |---|---|---|
> | East: | Site of Pitchaiah | Locality village/town Macherla within the marginally noted boundaries. During the licence period commencing from the 1st July, 2005 and ending with the 30th June, 2006 subject to the following conditions and stipulations to be observed by you the said viz., |
> | West: | Site of Narasiva Narayana | |
> | North: | Site of R. Anantha Rama Rao | |
> | South: | Nagarjuna Sagar Road | |

In the meanwhile, the respondent executed counter-part agreement in Form-4B whereby he agreed to abide by the terms and conditions of licence and pay Fee/Proportionate Licence Fee of Rs.5,50,000/-.

After issue of licence, appellant No.2 called upon the respondent to pay Licence Fee for the entire period of 12 months commencing from 1-7-2005. The respondent challenged the demand by filing Writ Petition No.23415 of 2005. He pleaded that the demand of Licence Fee for the entire licence period was wholly arbitrary and the non-petitioners cannot compel him to pay Licence Fee for the period commencing from 1-7-2005 ignoring the fact that the licence had been granted pursuant to order dated 21-10-2005 passed by the Commissioner. He prayed for grant of a declaration that action of the respondents (appellants herein) in demanding payment of Licence Fee for 12 months is arbitrary and illegal.

In the counter-affidavit filed by Sri S.Ramesh, Assistant Prohibition and Excise Superintendent, Narsaraopet, Guntur District, it was averred that the petitioner does not have the right to trade in liquor and the State Government is free to lay down any condition for parting with its exclusive privilege of manufacture, sale etc., of liquor and further that after having availed the licence granted by the Commissioner, it was not open to the writ petitioner to seek the court's intervention for quashing the demand of Licence Fee. Sri S.Ramesh pleaded that in terms of Rule 3 (1) (k) of the Rules read with Rule 5 and counter-part agreement, the writ petitioner is bound to pay Licence Fee for the entire licence period commencing from 1st July, 2005.

The learned Single Judge analysed the scheme of the 2005 Rules and concluded that the writ petitioner cannot be compelled to pay Licence Fee for the entire period of 12 months. The reasons assigned by the learned Single Judge for accepting the respondent's plea are as follows:

> "On a combined reading of the above three definitions of licence fee, proportionate licence fee and the licence period, it is clear that the licence period normally means 12 months, provided the licence is granted on or before 1st July of the year. However, there is no provision under the Rules which makes compulsive

that licence shall be granted only before 1st July of the year. On the other hand, the above noted definitions which expressly included proportionate licence fees indicate that the licence can even be granted in the middle of the excise year. However, in such circumstances, the period of licence commences from the 1st of the month in which the licence is granted ending with 30th June.

Thus, it is clear that the annual licence fee for a period of 12 months as shown in the schedule appended to the Rules is applicable only where the licence is issued on or before 1st July of the year. In all other cases, the licence fee need not be for a period of 12 months, but it can be calculated proportionately with reference to the actual period of licence i.e., a part of the period of 12 months, the only restriction being that even where the licence is issued during the month, the licence fee shall be collected from 1st of the said month. Sub-rule (1) of Rule 9 which requires that Bar licence shall be valid for one year subject to payment of ***licence fee as prescribed***, if read together with the definition of Licence Fee under Rule 3 (k) makes it very clear that if the licence is granted in the middle of the year the licence fee can be collected only proportionately and not for the entire excise year of 12 months.

It is true that Rule 10 of the Rules does not expressly provide for payment of proportionate licence fee, but only states that annual licence fee shal be at the rates as shown in the schedule. However, the law is well settled that a statute must be read as a whole and one provision of the Act or the Rules should be construed with reference to the other provisions in the same Act or Rules so as to avoid any inconsistency. Particularly, it is the duty of the Court to avoid a construction that reduces one of the provisions of statute to a dead letter. The expression "Proportionate Licence Fee" in Rule 3 (k) & (o) and "part of licence period" in Rule 3 (l) cannot be said to have been used by the Legislature without any purpose. Thereafter, the word '***annual licence fee***' employed in Rule 10, if read in the light of the definition of licence fee under Rule 3 (k) read with Rule 3 (o), it is clear that it includes proportionate licence fee."

Learned Government Pleader for Prohibition and Excise argued that the order under challenge is liable to be set aside because the view expressed by the learned Single Judge on the respondent's liability to pay Proportionate Licence Fee only is based on a totally erroneous interpretation of Rule 3 read

with Rule 5 as also the permission accorded by the Commissioner for grant of licence to the respondent. She further argued that mere incorporation of the definition of "Proportionate Licence Fee" in the 2005 Rules is not sufficient to relieve the respondent of his statutory as well as the contractual obligation to pay the Licence Fee for the entire licence period beginning from 1st July, 2005. Learned counsel emphasized that the respondent does not have any fundamental or legal right to trade in liquor and argued that after having agreed to pay Licence Fee for the entire period, he cannot turn round and question the demand of Licence Fee for the period commencing from 1st July, 2005. In the end, she submitted that even though the respondent may have actually commenced sale of liquor after 21-10-2005, he is bound to pay Licence Fee for the entire period of 12 months. In support of her argument, the learned Government Pleader relied on the judgment of the Full Bench in **Sri Narsimha Wines v. Prohibition and Excise Superintendent**[1]**.**

We have given serious thought to the argument of the learned Government Pleader. Sections 13, 14, 15 of the Andhra Pradesh Excise Act, 1968 contain an embargo against manufacture, possession and sale of excisable articles except under the authority and in accordance with the terms and conditions of licence granted by the competent authority. Section 15 (1) declares that no person shall, sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted in this behalf. Sub-Section (2) of Section 15 enumerates the authorities which can grant licences of different types. Section 28 prescribes the forms and conditions of licence. Section 72 empowers the State Government to make Rules for carrying out all or any of the proposes of the Act. In exercise of the powers vested in it under Section 72 read with Section 17, 28 and 29 of the Act, the State Government, has, from time to time, framed Rules for grant of licences of different types. The 2005 Rules have also been framed in exercise of that power. These rules were notified on 24th May, 2005. Rules 3(1)(i),(k),(l), (o), 5,9 and 10 of the Rules which have bearing on the adjudication of this appeal read as under:

"**3. Definitions**:-

(1) In these rules unless the context other requires:-

(i) 'Licence' means licence granted under these rules;

(k) "License Fee" means annual license fee as shown in the schedule appended to these rules and includes proportionate licence fee.

(l) "Licence period" means a period of 12 months beginning from the 1st July of the year and ending with 30th of June of the succeeding year or part thereof.

(o) "Proportionate License Fee" means License fee calculated proportionately to the whole months of the License period.

5. Application for licence:

(1) The application for the grant of a Bar shall be in Form-1B, and should be accompanied by a challan for Rs.10,000/- (Rupees Ten thousand only) towards application fee and may be addressed to the Prohibition and Excise Superintendent of the district where the applicant's premises is to be licensed.

(2) The Prohibition and Excise Superintendent, after making such enquiry as he may think necessary, to ascertain the bonafides of the applicant and verifying the particulars furnished in the application should examine the suitability of the premises for granting Bar and forward the same to the Commissioner of Prohibition and Excise along with his report.

(3) The Commissioner of Prohibition and Excise may grant the licence after causing such enquiry as he may deem fit.

(4) The applicant before issue of the licence shall execute a 'counter-part agreement in Form-4B, on the stamp paper of requisite value as per provisions of the Indian Stamp Act, 1899.

9. Period of the Licence and commencement of business:-

(1) Every Bar shall be valid for one year commencing from 1st July, ending with 30th June, of the succeeding year, subject to payment of licence fee as prescribed.

Provided that the licence issued on or after the 1st July shall be valid upto the 30th June, of the succeeding year.

Provided that a licence granted for a part of the licence period shall be valid for such period as may be specified by the licensing authority.

Provided further that every licensee shall commence his business from 1st July, or such other date as may be specified in the licence and shall keep the Bar open every day during the hours fixed till the expiry of the licence period with sufficient stock of liquor unless the closure of the Bar is ordered by the competent authority for the period specified.

Before issue of a licence the licensee shall execute a counter-part agreement in form-4B on the stamp paper of requisite value as per the provisions of the Indian Stamp Act, 1899.

10. Licence Fee:-

(1) annual licence fee for the Bar shall be at the rates as shown in the Schedule appended to these rules. The annual licence fee shall be paid before commencement of the license period in one lumpsum or in two equal instalments or in a manner as notified from time to time. Where the licence is issued before 1st July the 1st instalment, i.e., half of the annual licence fee shall be paid into the Government Treasury through a challan before the issue of licence along with a Bank Gaurantee from a Scheduled Bank situated in Andhra Pradesh in Form-3B or fixed Deposit receipt for an amount equal to half of the annual licence fee. The Bank Guarantee shall be valid for a period of seven months. The 2nd instalment of the annual licence fee i.e., half of the annual licence fee, shall be remitted in to the Government Treasury on or before 31st December of the same year, failing which the license shall stand cancelled automatically on the expiry of such date and subject to the conditions prescribed in Form-2B.

Provided that the licensees in Form-2B shall be permitted to pay 1/3rd of the annual licence fee, together with a Bank Guarantee issued by a Scheduled Bank situated in Andhra Pradesh in Form-3B1 or Fixed Deposit Receipt for an amount equal to 2/3rd of the

annual licence fee. The 2nd and 3rd instalments of the annual licence fee of 1/3rd each shall be remitted on or before 30th September and 31st December respectively, subject to payment of interest @ 18% peer annum on 1/6th of annual licence fee from 1st July to 30th September of the licence period.

(2) In the event of failure to remit the instalment on due date, the licence shall stand cancelled automatically and all the deposits/Bank Guarantees shall stand forfeited to the Government.

(3) If a licence is surrendered in the middle of the licence period, the deposits and the Licence fee paid shall be forfeited to the Government.

(4) In case a licence is refused, the fee paid shall be refunded.

(5) The licence fee shall be paid into the concerned Government Treasury in the District in which the licensed premises is located.

(6) Where a licence stands cancelled or suspended for any violation of the rules and conditions of licence, the Commissioner of Prohibition and Excise may order forfeiture of the deposit/Bank Guarantee furnished by the licensee either in full or in part depending upon the nature of violation and such forfeited deposit/Bank Guarantee shall be made good by the licensee within the time fixed by the Commissioner of Prohibition and Excise. In case the licensee fails to make good the extent of forfeited deposit/Bank Guarantee within the time fixed the licence automatically stands cancelled."

A reading of the above reproduced rules makes it clear that the term "Licence Fee" means annual licence fee as shown in the schedule appended to these rules and includes Proportionate Licence Fee. The expression "Proportionate Licence Fee" means Licence Fee calculated proportionately to the whole months of the licence period. The term "Licence Period" means a period of 12 months beginning from the 1st July of the year and ending with 30th of June of the succeeding year or part thereof. Rule 9 envisages grant of Bar licence for a period of one year commencing from 1st July and ending with 30th June of the succeeding year. First proviso to this rule lays down that licence

issued on or after the 1st July shall be valid up to the 30th June of the succeeding year. Second proviso postulates grant of licence for a part of the licence period and lays down that such licence shall be valid for such period as may be specified by the licencing authority. Rule 10 prescribes the mode of payment of Licence Fee as also the consequences of surrender or cancellation of licence.

If Rule 10 is read in conjunction with Rule 9 and definitions of the term "Licence Fee", "Licence Period" and "Proportionate Licence Fee", it becomes clear that ordinarily a licence is to be granted for a period of 12 months commencing from 1st July of the year. The period of such licence comes to an end on 30th June of the succeeding year. The use of the words "part thereof" in the definition of the term "Licence Period" makes it clear that the competent authority can grant licence for a period shorter than 12 months commencing from 1st July of the year. Second and third provisos to Rule 9 (1) also envisages grant of licence for a part of the licence period. The term "Licence Period" finds mention in the definition of the expression "Proportionate Licence Fee" and as also Rule 9 of the Rules. This means that the competent authority can grant licence for a period of less than 12 months and the licensee of such period can do business from the date of grant up to 30th of June of the succeeding year. The object underlying the enactment of provisions for grant of licence for a period of less than 12 months is to ensure that the government does not loose revenue simply because the licence for a particular period could not be granted before 1st July of the year. If an existing licence is surrendered or is cancelled, the competent authority will have to grant licence for the remaining period. The tenure of such licence will come to an end on 30th June of the succeeding year. This is the reason why the definition of the term "Licence Fee" includes the concept of "Proportionate Licence Fee". The incorporation of specific definition of the expression "Proportionate Licence Fee" in the 2005 Rules is clearly indicative of the intention of the rule making authority to charge Licence Fee only for the period during which the licensee can avail the benefit of licence. If the licence is granted for the entire licence period commencing from 1st July of

the year, then he is bound to pay annual licence fee for the entire period of 12 months irrespective of the period of doing business. However, if the licence is granted for a shorter period, then the licensee is required to pay "Proportionate Licence Fee" only for that part of the licence period. If the Rule making authority had intended that every licensee shall, irrespective of the period of licence, pay annual licence fee for the whole of the year, then there was no occasion for the said authority to incorporate the definition of the expression 'Proportionate Licence Fee' or provide for grant of licence for a shorter period.

In view of the above discussion, we agree with the learned Single Judge that a person like the respondent who was granted licence for a period of less than 12 months could not have been called upon to pay Licence Fee for the entire licence period commencing from 1st July, 2005. As a corollary, we hold that the learned Single Judge did not commit any error by declaring that the respondent is required to pay Licence Fee only for the period of licence.

The judgment of the Full Bench in **Sri Narsimha Wines v. Prohibition and Excise Superintendent** (supra) does not have any bearing on this case. The Full Bench interpreted the provisions of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules 1970 which did not contain provisions like those contained in the 2005 Rules.

No other point has been argued.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

19th June, 2006

G.V.SEETHAPATHY, J

Ksld/GRR/svs/msv

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[1] 2001 (6) ALT 240 (FB)